IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15249 of 2003
With
SPECIAL CIVIL APPLICATION No. 3890 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAIKH ABDUL MANNAN KHUDABAKSH MUSLIM - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR RM CHHAYA for HARIN P RAVAL for Petitioner(s) : 1,
MR DA DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1, 3,
MR NIKHILESH J SHAH for Respondent(s) : 2,
UNSERVED-EXPIRED (N) for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/07/2006

ORAL COMMON JUDGMENT

1. As both these Special Civil Applications are interconnected and/or can be said to be cross petitions, they are being disposed of by this common judgment and order.

2. Petitioner of Special Civil Application No.15249 of 2003 by way of this petition under Article 226 of the Constitution of India has prayed for an appropriate writ, direction and/or order quashing and setting aside the decision of respondent No.3, Town Planning Officer, Town Planning Scheme No.4 in relocating the location of Final Plot No.11 reconstituted out of original plot No.11 which was reconstituted out of city survey No.339. Petitioner has also further prayed to quash and set aside the decision of the Town Planning Officer in proceeding to allot Final Plot No. 16 to respondent No.4, who is the owner

of city survey No.345 of Anjar town. A further prayer is also made commanding respondent No.3 to alter his decision and to restore the location of Final Plot No. 11 reconstituted out of city survey No.339 with a further direction to allocate the land and property of Final Plot No. 11 in such a manner that it remains at the same place where city survey No.339 existed.

3. So far as Special Civil Application No.3890 of 2005 is concerned, the petitioner has prayed for appropriate writ, direction and/or order in quashing and setting aside the action of the respondents in not hading over the possession of Final Plot No. 16 to the petitioner, which is allotted to him under the finalized Town Planning Scheme No.4, which is occupied by the petitioner of Special Civil Application No.15249 of 2003. Thus, the petitioner has prayed for an appropriate order directing the respondents to implement the Town Planning Scheme No.4 which has

become final by handing over the peaceful and vacant possession of Final Plot No. 16.

4. Petitioner of Special Civil Application No.15249 of 2003 was the owner of property bearing city survey No.339 admeasuring 44.70 sq mtrs. Petitioner of Special Civil Application No.3890 of 2005 was the owner of property bearing city survey Nos.344 and 345. That due to vast destruction of human life and property in the area due to devastating earthquake on 26th January, 2001, due to which, thousands of people were buried under the debris of buildings and of narrow streets, the State Government decided to constitute the special planning for the whole area of Anjar under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as “the Act”). That pursuant to the Government notification dated 9.5.2001, Area Development Authority known as “AADA” was constituted. A declaration for intention to prepare Town

Planning Scheme Nos.1 to 4 was declared by the AADA vide Resolution dated 3.5.2002 as required under Section-41(8) of the Act and the same was published in the Gujarat Government Extra Ordinary Gazette dated 4.5.2002 as required under Rule-16(1) of the Rules. That said declaration of intention was also published in local newspapers. Individual notices as well as public notices were given for owners' meeting and the owners' meeting was held on 23.5.2002. A draft Town Planning Scheme was published in the newspaper and the suggestions and objections were invited from the land owners. That draft scheme was made by the AADA by Resolution dated 14.6.2002 and the same was also published in the Government Gazette. That thereafter suggestions and objections were invited. It is the case on behalf of the petitioner that he also submitted objections and considering the same draft Town Planning Scheme came to be sanctioned and/or modified and as required under Section-48(1), the Draft Town

Planning Scheme was submitted along with modifications and objections received by the AADA, to the Government for sanction and the said Draft Town Planning Scheme came to be sanctioned by the State Government vide Notification dated 17.7.2002. Thereafter, Town Planning Officer was appointed to finalize sanctioned draft town planning scheme, prepared and submit a preliminary Town Planning Scheme and thereafter Town Planning Officer submitted a Preliminary Town Planning Scheme after inviting suggestions and objections and the same was sent to the State Government and that the Government accorded its sanction to the Preliminary Town Planning Scheme vide notification dated 21.1.2003 and thus, the Town Planning Scheme came into force with effect from 21.1.2003. That under the finalized Town Planning Scheme No.4 which has become final, the petitioner of Special Civil Application No.15249 of 2003 is allotted Final Plot No. 11 admeasuring 44.70 sq mtrs and petitioner of Special Civil

Application No.3890 of 2005 is allotted Final Plot No. 16. It is required to be noted that the properties owned by the petitioner of Special Civil Application No.3890 of 2005 i.e. property bearing city survey Nos. 344 and 345 had gone under six mtrs town planning road and therefore, the petitioner of Special Civil Application No.3890 of 2005 is allotted Final Plot No. 16 from land bearing city survey No.339, O.P. No.11, owned and occupied by the petitioner of Special Civil Application No.15249 of 2003 and the petitioner of Special Civil Application No.15249 of 2003 is allotted Final Plot No. 11 on six mtrs town planning road out of property bearing city survey No.391, O.P. No.63. Thus, on finalization of Town Planning Scheme No.4, petitioner is required to hand over the possession of Final Plot No. 16 i.e. original city survey No.339, O.P. No.11 to respondent No.4 i.e. petitioner of Special Civil Application No.3890 of 2005 and petitioner is required to take possession of

Final Plot No. 11. As the petitioner is required to hand over the possession of Final Plot No. 16 i.e. original land bearing city survey No.339 and therefore, the petitioner of Special Civil Application No.15249 of 2003 has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

5. So far as petitioner of Special Civil Application No.3890 of 2005 is concerned, he was the owner of property bearing city survey Nos.344 and 345 which is gone under the six mtrs town planning wide road and he has been allotted Final Plot No. 16. On one hand, the properties occupied by the petitioner which was going under 6 mtrs town planning road has been taken over by the Area Development Authority and on the other hand, he was not given actual peaceful and vacant possession of Final Plot No. 16 which is allotted to him under the finalized Town Planning Scheme

and therefore, the petitioner of Special Civil Application No.3890 of 2005 has preferred the present Special Civil Application under Article 226 of the Constitution of India for implementation of the Town Planning Scheme and for handing over peaceful and vacant possession of Final Plot No. 16 which is from original city survey No.339 occupied by the petitioner of Special Civil Application No.15249 of 2003.

6. Shri Rashmin Chhaya, learned advocate appearing on behalf of the petitioner has vehemently submitted that instead of allotting Final Plot No. 16 to respondent No.4 from the land bearing original city survey No. 339 occupied by the petitioner, the authority ought to have allotted Final Plot to respondent No.4 at some other place so as not to disturb the petitioner. It is submitted that in fact, the petitioner is required to be allotted Final Plot from very O.P. No.11 itself i.e. the land

originally occupied by the petitioner and instead of disturbing two persons, the authority ought to have considered the above aspect, so that the petitioner would not be affected. It is submitted that not allotting the final plot from very OP No.11 itself is non application of mind which requires to be quashed and set aside. It is further submitted that with a view to favour respondent No.4, who was the owner of property of city survey No.345 whose property was subjected to the deductions for the purpose of road widening and therefore, the action of respondent No.3 in allotting Final Plot No. 16 to respondent No.4 is arbitrary, mala fide and illegal. It is further submitted that the petitioner even raised objections, still petitioner has been allotted Final Plot No. 11 at some other place and respondent No.4 has been allotted Final Plot No. 16 from the land bearing city survey No.339 owned and occupied by the petitioner and therefore, it is requested to allow the present Special Civil

Application and grant the relief as prayed for. No other submissions have been made.

7. Petition is opposed by Shri Dipan Desai, learned AGP appearing on behalf of respondent Nos.1 and 3, Shri Nikhilesh Shah, learned advocate appearing on behalf of respondent No.2 and Shri Kirtidev R. Dave, learned advocate appearing on behalf of the petitioner of Special Civil Application No.3890 of 2005 i.e. respondent No.4 herein. It is submitted on behalf of the respondents that the Town Planning Scheme No.4 has become final after following due procedure as required under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. It has been submitted that when the Town Planning Scheme has become final, it becomes part of the Act and therefore, the same cannot be challenged. It is submitted that the properties owned by respondent No.4 has gone under six mtrs town planning road for the purpose of widening of the said road and

he was required to be allotted some other plots and accordingly, conscious decision has been taken to allot Final Plot No. 16 to the petitioner of Special Civil Application No.3890 of 2005 which is from original city survey No.339 occupied by the petitioner of Special Civil Application No.15249 of 2003 at the relevant time. It is submitted that it is ultimately for the Area Development Authority, Town Planning Officer to consider how the scheme is to be framed and implement after considering the expert opinion and the petitioner cannot suggest which plot is to be allotted to whom. It is submitted that if the contention of the petitioner and/or request of the petitioner is accepted then in no case, Town Planning Scheme can be implemented. It is also further submitted that as such the petitioner of Special Civil Application No.15249 of 2003 has never challenged the Town Planning Scheme which has become final and in absence of any challenge to the Town Planning Scheme, the

Town Planning Scheme is required to be implemented fully and for that he is required to hand over the possession of Final Plot No. 16 i.e. original land bearing city survey No.339 to respondent No.4. The learned advocates appearing on behalf of the respondents have relied upon the Full Bench judgment of this court in the case of **Saiyed Mohammed Abdullamiya Uraizee (since deceased by his successor) V. Ahmedabad Municipal Corporation and others** reported in 1977 GLR 549, in the case of **Dungarlal Harichand V. State of Gujarat and others** reported in 1976 GLR 1152 and in the case of **Kashiben W/o Pitamber Devchand and another V. State of Gujarat and another** reported in 1989(2) GLR 1176. Relying upon the aforesaid decisions, the learned advocates appearing on behalf of the respondents have submitted that on finalization of the Town Planning Scheme, the land absolutely vests in the Area Development Authority and all rights of these persons occupying the same comes to an end and the

eviction power would be merely an administrative power of eviction. It is also further submitted that as held by this Court in the aforesaid decisions, once the Town Planning Scheme is sanctioned and finalized, the scheme becomes a legislative measure and therefore, the occupier could never invoke any prejudice or consideration of the principle of fair play and justice. Therefore, it is requested to dismiss Special Civil Application No.15249 of 2003.

8. It is further submitted that so far as Special Civil Application No.3890 of 2005 is concerned, the petitioner of that Special Civil Application could not be hand over the peaceful and vacant possession of Final Plot No. 16 in view of the pendency of Special Civil Application No.15249 of 2003 as the petitioner of that Special Civil Application is not handing over the peaceful and vacant possession Final Plot No. 16 i.e. original city survey No.339 and therefore,

it is requested to pass appropriate orders.

9. Heard the learned advocates appearing on behalf of the parties.

10. It is not in dispute that the Town Planning Scheme No.4, Anjar has become final after following due procedure as required under the Act. As the petitioner of Special Civil Application No.15249 of 2003 owner of original land bearing city survey No.339, OP No.11 has been allotted Final Plot No. 11 and petitioner of Special Civil Application No.3890 of 2005 has been allotted Final Plot No. 16 in lieu of their original city survey No.345. As held by the Full Bench of this Court in two decisions i.e. Dungarlal Harichand (supra) and Saiyed Mohammed Abdullamiya Uraizee (supra), the Full Bench has observed that once the Town Planning Scheme is sanctioned and finalized, the scheme becomes a legislative measure under which the rights of the

parties cease and the powers of eviction in such a context would be in the nature of an administrative power and, therefore, when the parties admittedly have no right under the final scheme to continue their occupation, they could never invoke any prejudice or consideration of the principle of fair play and justice so as to have these notices under Section 68 read with Rule 33 invalidated. It is also further held by the Full Bench in Dungarlal Harichand (supra)that so far as the validity of such legislative measure is concerned, the validity can be gone into even in writ jurisdiction only to the limited extent whether there is any transgression of jurisdiction of the authorities is concerned, and whether the scheme as finally emerged is totally inconsistent with the Act. It is further held that it is only the fundamental breaches, that is, where minimum statutory essentials are not complied with, which result in a total lack of jurisdiction and not other procedural error or

defects that would render a scheme, which had become a legislative measure and a part of the Act, liable to attack or challenge in a court on the ground that it is null and void. Thus, considering the two Full Bench decisions of this Court as well as one another Division Bench judgment referred to hereinabove, on finalization of the Town Planning Scheme No.4 which has become part of the Act and whatever the consequences follow for the purpose of implementation of the Town Planning Scheme is required to be followed. It is required to be noted at this stage that the petitioner has not challenged the Town Planning Scheme No.4 which has become final.

11. It is also required to be noted that the original plot of the petitioner was not having a regular shape and while reconstituting his plot, the petitioner will be getting final plot having good frontage on a six mtrs wide road. It is also required to be noted that the property owned by

respondent No.4 i.e. petitioner of Special Civil Application No.3890 of 2005 i.e. owner of property bearing city survey Nos.344 and 345, is going under six mtrs wide town planning road and he was required to be allotted some other plot and it has been decided to allot Final Plot No. 16 which is incidentally, out of property bearing city survey No.339 owned and occupied by the petitioner.

12. Looking to the fact that the earthquake had practically destroyed the entire city of Anjar, it became absolutely necessary for the respondent authorities to make an effort to see that the residents of the city are rehabilitated as soon as possible and the city is reconstituted in a planned manner. The notification issued for constituting respondent No.2 authority clearly states that the authority was constituted so as to see that adversely affected residents are rehabilitated and such is planed in a systemic

manner. It was also the object to have modern planning and reconstruction of the infrastructure in a better manner. This Court is informed that the Town Planning Scheme is framed in such a manner that all the residential buildings and other buildings will have a frontage of six mtrs wide road. In the said process, some one is bound to be adversely affected. As stated above, even the petitioner would be the beneficiary to the extent that he will be getting Final Plot No. 11 having a good frontage on a six mtrs wide road. Under the circumstances, and considering the aforesaid decisions, prayer of the petitioner of Special Civil Application No. 15249 of 2003 cannot be granted. Granting of such relief would be upsetting the Town Planning Scheme which has become final and which is the part of the Act. Therefore, the said Special Civil Application is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad interim relief, granted earlier stands vacated forthwith.

However, there shall be no order as to costs.

13. So far as Special Civil Application No. 3890 of 2005 is concerned it is not in dispute that the Town Planning Scheme has become final and under the finalized Town Planning Scheme No. 4, the said petitioner is allotted Final Plot No. 16 in lieu of original city survey No. 345 which has gone under six mtrs town planning road for widening of the said road. Once, the Town Planning Scheme has become final, as held by the Hon'ble Supreme Court in the case of The Municipal Corporation for Greater Bombay and another (supra) reported in AIR 1972 SC 793, the authority is bound to implement the same and hand over the peaceful and vacant possession of final plot as per the re-constituted plots under the Town Planning Scheme which has become final. It is required to be noted at this stage that the possession of the property occupied by the petitioner bearing city survey Nos. 344 and 345

is already taken over by the authority for the purpose of construction of 6 mtrs wide road and only because of pendency of Special Civil Application No.15249 of 2003, the petitioner of Special Civil Application No.3890 of 2005 is not handed over the peaceful and vacant possession of Final Plot No. 16 which is occupied by the petitioner of Special Civil Application No.15249 of 2003. Under the circumstances, on dismissal of Special Civil Application No.15249 of 2003 and even, otherwise for the reasons as stated above, Special Civil Application No.3890 of 2005 is allowed and the respondent authorities are directed to implement the Town Planning Scheme No.4 and hand over the peaceful and vacant possession of Final Plot No. 16 to the petitioner of Special Civil Application No.3890 of 2005 within a period of two months from the date of receipt of this order. Rule is made absolute to the extent so far as Special Civil Application No.3890 of 2005 is concerned. However, there

shall be no order as to costs.

(M.R.SHAH,J.)

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